S.B. Civil Writ Pet. No. 5670/03
Smt. Kivni Devi Vs. State & Ors.

Date of order : 26.5.2006

HON'BLE MR. GOVIND MATHUR, J.

Mr.N.L. Joshi for the petitioner.
Mr. B.L. Tiwari, Dy. G.A.

By this petition for writ a challenge is given by the petitioner to the judgment dated 18.8.2003 passed by the learned Superintending Engineer Irrigation, Circle accepting the appeal preferred by respondent No. 4 Shri Pritam Singh giving challenge to the order dated 03.5.2003 passed by the Executive engineer Irrigation, Division IInd, Gharsana.

In brief, the facts of the case are that the petitioner is owner and occupier of square No. 162/24 Chak 21 AS A. As a consequence of resurvey conducted in the year 1993, 14 bighas of land occupied by the petitioner was declared as command land. The water course was accordingly sanctioned through Killa No. 1 to 5 and a 'naka' point was given at Killa No. 1 of Square 162/24. The petitioner submitted an application to provide a water course through Naka point at Killa NO. 21 instead of Killa NO. 1 as through Killa No. 1, the water course was not fisible and effective. The application preferred by the petitioner was

accepted by the Executive Engineer vide order dated 03.5.2003. It is pertinent to note here that the tenant of Murabba where from the water course was passing was having no objection in the event of grant of water point to the petitioner at Killa NO. 21.

Being aggrieved by the order dated 03.5.2003 Shri Pritam Singh preferred the appeal before Superintending Engineer Irrigation, Circle, Sri Vijaynagar. Shri Pritam Singh contended in the memo of appeal that in the event of sanction of water point through Killa No. 21, the water supply to his land shall be adversely effected. The Superintending Engineer by the order dated 18.8.2003 accepted the appeal without giving any finding with regard to any adverse effect upon the water supply to respondent No. 4 Shri Pritam Singh. It is stated in the order dated 18.8.2003 that in the event of sanction of water point at Killa No. 21, there shall be difficulty in providing water at Killa NO. 1. It is worthwhile to note that the Killa No. 1 referred above is also a petitioner's land.

Be that as it may, no finding is given by the learned Superintending Engineer as to how the respondent No. 4 will be effected by grant of water point at Killa No. 21. So far as Killa No. 1 is concerned it is part of Square No. 162/24, that is under the tenancy of the petitioner, therefore, in the event of grant of

water point at Killa NO. 21, if any adverse effect is caused then, it is to the petitioner only and not to the respondent No. 4. In view of it, I am of the considered opinion that the Superintending Engineer erred while accepting the appeal preferred by the respondent No. 4 vide judgment dated 18.8.2003.

Accordingly, this petition for writ is allowed , the judgment dated 18.8.2003 passed by the Superintending Engineer Irrigation, Circle, therefore, is quashed. The order dated 03.5.2003 passed by the Executive Engineer Irrigation, Anoopgarh Branch, Division IInd, Gharsana is restored. No order as to cost.

(GOVIND MATHUR), J.

ns.